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No. 04-1240

IN THE

Supreme Court of the United States

ROYAL CARIBBEAN CRUISES LTD.,
Petitioner,

v.

LAWRENCE W. HALL,
Respondent.

On Petition for a Writ of Certiorari to the Florida District Court of Appeal, Third District

REPLY BRIEF

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RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioner's Corporate Disclosure Statement was set forth at page ii of its Petition for a Writ of Certiorari, and there are no amendments to that Statement.

TABLE OF CONTENTS

	Page
RULE 29.6 CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iv
REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI	1
RATHER THAN DIRECTLY RESPONDING TO THE LEGAL PRINCIPLES ARGUED BY PETITIONER FOR THIS COURT'S REVIEW OF THE DECISION BELOW, RESPONDENT TRIES TO DODGE THEM BY MISCHARACTERIZING THE ARGUMENTS ASSERTED IN THE PETITION	1
CONCLUSION	5

TABLE OF AUTHORITIES

CASES Page

Holmes v. Oregon & California Railway Co., 5 F. 523 (D. Or. 1881) 4

Olsen v. New York Central R.R. Co., 341 F.2d 233 (2d Cir. 1965) 4

Reyes v. Vantage S.S. Co., 558 F.2d 238 (5th Cir. 1977) 3

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RATHER THAN DIRECTLY RESPONDING TO THE LEGAL PRINCIPLES ARGUED BY PETITIONER FOR THIS COURT'S REVIEW OF THE DECISION BELOW, RESPONDENT TRIES TO DODGE THEM BY MISCHARACTERIZING THE ARGUMENTS ASSERTED IN THE PETITION

Respondent mischaracterizes two key arguments set forth in the petition, thereby trying to divert this Court's attention away from the actual issues raised in urging this Court to accept review of the lower court's decision. First, Petitioner has never argued that "in the absence of a specific federal maritime dram shop *statute*, a trial court is free to disregard traditional federal maritime common law rules . . ." Br. in Opp'n at 3. To the contrary, Petitioner focuses on what constitutes a general maritime rule in the first instance and

maintains throughout its petition that "[i]n the absence of a Congressional act, a decision of this Court, or a concurrence of circuit court decisions, established maritime rules of substantive law do not exist." Pet. at 1, 9-17.

Respondent attempts to take his mischaracterization one step further by quoting an article authored by Petitioner's trial counsel which he believes contradicts what *he misrepresents to be* Petitioner's position. Br. in Opp'n at 3-4. Petitioner's position, however, is in no way inconsistent with the article's statement that courts have been "ignoring the extensive body of maritime common law." Br. in Opp'n at 4. Petitioner asserts that in the absence of an established maritime rule of law—*whether derived from Congressional act, a decision from this Court, or a consensus of circuit court decisions*—state courts must invoke their own laws to supplement the gaps in maritime law. Pet. at 5-6. In fact, the crux of the petition is that state courts have undermined maritime law's goal of uniformity by establishing their own rules of maritime law and procedure—like the appellate court below—when there are already established and applicable maritime rules and procedures. Pet. at 7-8. Pet. at 7-8.

Furthermore, Respondent repeatedly asserts that Petitioner has inappropriately "cherry-picked" Florida's dram shop statute because of its favorable language.[1] Br. in Opp'n at 1, 3, 10. The facts of this case belie such an implication: Respondent filed suit in Florida; Petitioner's base of operation is in Florida; and the ship on which Respondent was injured departed from and returned to port in Florida. In short, Florida is the only state with a significant relationship to the events surrounding Respondent's accident.

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[1] The superficiality of Respondent's entire position is borne out by his assertion that he would have had the lower court apply Florida's Dram Shop Act had it provided a more favorable remedy to him. Br. in Opp'n at 13.

Second, Respondent has taken his own voluntary intoxication and blurred the concept of "duty"—the *sine qua non* of any liability—with an affirmative defense which presumes the existence of liability. Contrary to Respondent's implication, Petitioner has not maintained that Respondent's voluntary intoxication would be a "complete defense," Br. in Opp'n at 2, or that it would be an issue of comparative negligence, *id.* at 12, thereby immunizing it from liability. Rather, Petitioner has consistently maintained that the case boils down to whether, under the circumstances of this case, a shipowner owes a duty to the passenger in the first instance, which it does not. *See* Pet. at 11-18. The issue of comparative negligence is irrelevant since Respondent's claim is not viable.

Respondent perpetuates his misconception by claiming that under Petitioner's view passengers would be deemed "second-class citizens" or "miscreants,"and relegated to an inferior standard of care than seamen. Br. in Opp'n at 11, 12. However, federal maritime law has always afforded seamen a special status because of the unique relationship between seamen and their vessels and the "paternalistic" duty the shipowner owes to seamen as "wards" of admiralty. *See Reyes v. Vantage S.S. Co.*, 558 F.2d 238, 241, 244 (5th Cir. 1977). For example, the doctrines of unseaworthiness and maintenance and cure are available to seamen but not to passengers and a seaman's negligence claim under the Jones Act is subject to reduced standards of causation. In essence, seamen are entitled to protections exceeding those of a ship's passengers—the obligation to the citizenry is not reduced, rather the obligation to seamen is heightened.[2]

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[2] Petitioner is not urging this Court to adopt five different standards of care as argued by Respondent. Br. in Opp'n at 10. Rather, Petitioner contends that seamen are subject to their own special rules and everyone else is subject to the applicable general maritime rule, if one exists. If there is no applicable general maritime rule, then a court should look to apply state law.

Respondent cites to *Holmes v. Oregon & California Railway Co.*, 5 F. 523 (D. Or. 1881), for the proposition that "[f]ederal maritime common law has *always* required ship owners, no matter where they are, to exercise reasonable care for passengers where alcohol aboard vessels is concerned." Br. in Opp'n at 5. However, *Holmes* does not support that proposition for at least three reasons. First, the theory of liability against the shipowner was based on a defect in the premises and not on the decedent's voluntary intoxication. *Id.* at 542. Second, the court found that the passenger's intoxication played no part in his accident which occurred when he alighted from the ferry. *Id.* at 539, 542 ("before he reached the ferry-boat the effect of the liquor had practically passed away"; the defendant's failure to have some guard or gate to prevent passengers from prematurely alighting and inadequate lighting "was the negligence which caused the death"). Third, the entire case is dicta since the court ultimately dismissed the decedent's administrator's case. *Id.* at 535, 544.

Respondent also cites to *Olsen v. New York Central R.R. Co.*, 341 F.2d 233 (2d Cir. 1965), for a similar proposition but *Olsen* is also inapplicable for at least three reasons. Br. in Opp'n at 7. First, *Olsen* did not involve injuries sustained by a passenger on a cruise ship who had been served alcohol; it involved a commercial fisherman who boarded a tug boat to observe the duties of the deck hands and drowned after he fell overboard. *Olsen*, 341 F.2d at 234. Second, although the decedent was intoxicated at the time of the accident, there was no evidence that anyone on the tug boat had served the decedent alcohol. Most importantly, the shipowner's liability was premised on its failure to have a guardrail at the spot where the decedent fell overboard. *Id.* at 235.

CONCLUSION

Rather than responding to the petition, Respondent has erected two straw men, claiming them to be Petitioner's arguments, only to knock them down. Respondent has not, however, confronted the actual reasons underlying Petitioner's assertion that this Court should review the case in order to reaffirm the maritime principles which should be applied to determine when and whether a maritime rule of law exists as well as what rule to apply when an established maritime rule is lacking. This Court should also accept review to resolve the current disagreement among the federal district and state courts regarding the existence of a maritime dram shop rule of liability.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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